

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
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REPLY COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTelecom)¹ submits its reply comments in the above-referenced docket regarding the four proposals made by members and staff of the Federal-State Joint Board on Universal Service (Joint Board) for revisions of high-cost universal service support.

INTRODUCTION AND SUMMARY

USTelecom has advocated that no change to the current rural, high-cost universal service support mechanism is necessary and specifically that no proposal in its entirety of those for which comments were solicited should be recommended by the Joint Board to the Federal Communications Commission (FCC or Commission). USTelecom stresses here that there is consensus among the parties to this proceeding that none of the proposals should be recommended to the Commission. While a number of parties suggest that more detail is necessary to evaluate the proposals, others find critical flaws in each proposal, warranting that no proposal be recommended. A number of commenters across industry segments have found fault, as has USTelecom, with certain portions of the Joint Board proposals. USTelecom urges the Joint Board to reject all of the proposals and to maintain the current rural, high-cost universal

¹ USTelecom is the nation's leading trade association representing communications service providers and suppliers for the telecom industry. USTelecom's carrier members provide a full array of voice, data, and video services across a wide range of communications platforms.

service support mechanism as is,² but at a minimum the Joint Board should take note of the broad industry consensus opposing portions of the proposals and should reject those specific proposals.

DISCUSSION

I. Block grants of support to states for further distribution will increase administrative burdens associated with the high-cost program and will undermine the specific, sufficient, and predictable standard mandated by the 1996 Act.

In comments, USTelecom urged the Joint Board to reject proposals to implement block grants of high-cost support to states for further distribution by states to recipients of support because that process would be administratively burdensome for small carriers in that it would likely require carriers to submit to evaluations that are similar to rate cases, which are time-consuming, labor intensive, and generally burdensome.³ The administrative burdens of a block grant system to states are also of concern to other commenters for reasons other than the impact on small carriers.

Sprint Nextel notes that “the use of 50 different state administrators, as opposed to one centralized administrator, will dramatically increase the FCC’s oversight and audit responsibilities.”⁴ It also added that the Commission has already considered the option of allowing state commissions to administer federal universal service funds, but rejected such

² USTelecom continues to recognize that there are some positive aspects of the four proposals – specifically that there should be a unified system of support (but not delegation of distribution of support to the states); that costs deserving support should be considered on an omni-jurisdictional basis (not separated basis); that there should be rate benchmarks (based on composite end user rates on a statewide average) above which support would be provided; that a transition period should be provided for any changes to the universal service system; and that any proposed change to high-cost support should take into consideration reform of intercarrier compensation – but none of which outweigh the negative aspects of any proposal.

³ See USTelecom Comments at 9-10.

⁴ Sprint Nextel Comments at 15.

proposals because it found that the “administration by a central administrator would be most efficient and would ensure uniform application of the rules governing collection and distribution of funding for universal service support mechanisms nationwide.”⁵ Telecom Consulting Associates (TCA) expressed concern about the overall cost to the industry of participating in 50 different proceedings for receipt of support as well as the potential administrative burden and increased cost on the Universal Service Administrative Company (USAC) in having to comply with 50 different sets of rules in order to disburse support.⁶ TCA also highlights a detrimental by-product of block grant proposals – companies that rely on federal support “would be left guessing at federal support levels to be received, depending on which state controls the support distribution,” undermining the specific, predictable, and sufficient requirements of the Telecommunications Act of 1996.⁷ In addition to the administrative and cost burdens of complying with and overseeing 50 different state allocation programs, CTIA also notes that delegation to the states of authority over distribution of universal service support would “leave the FCC without sufficient means to ensure the fulfillment of its statutory responsibilities, including ensuring reasonable comparability of rates and services between the states.”⁸ Dobson Cellular also argues that a “block-granting approach . . . would be bad policy because of the states’ historical lack of experience with policies relevant to carriers other than LECs.”⁹ General

⁵ See Sprint Nextel Comments at 14-15, *quoting Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9213 (1997).

⁶ See TCA Comments at 4, *citing Developing a Unified Intercarrier Compensation Regime*, Reply Comments of the Corporation Commission of the State of Kansas, CC Docket No. 01-92 (July 20, 2005).

⁷ TCA Comments at 4.

⁸ CTIA comments at 13. See also Dobson Cellular Comments at 13.

⁹ See Dobson Cellular Comments at 14.

Communication (GCI) maintains that implementation of a block grant process would make universal service unpredictable from year to year, stifling investment.¹⁰

There are many valid and compelling reasons why the Joint Board should reject any proposal containing a block grant mechanism of delegating to the states the authority to make decisions over distribution of federal universal service support.

II. The FCC's legal authority to delegate its responsibilities under section 254 to the states is suspect.

A number of commenters have raised the issue of whether the Commission has the authority to delegate its responsibilities under section 254 of the Communications Act.¹¹ USTelecom maintains that the Commission does not have this authority. Block grant proposals that would delegate responsibilities that were specifically directed to the Commission under section 254 of the Communications Act would be contrary to the recent court decision in *USTA v. FCC*.¹² The D.C. Circuit's finding was clear: "federal agency officials . . . may not subdelegate to outside entities – private or sovereign – absent affirmative evidence of authority to do so."¹³ Applied in the context of the proposals at issue, the Joint Board must acknowledge the direction that Congress gave *to the Commission* to ensure the preservation and advancement of universal service, as well as to ensure that consumers in high-cost areas have access to reasonably comparable services at reasonably comparable rates of those in urban areas. The Commission cannot delegate these responsibilities to the states and therefore the Joint Board

¹⁰ See GCI Comments at 4.

¹¹ See AT&T Comments at 8, CTIA Comments at 13-17, and Dobson Cellular Comments at 13-14.

¹² See *United States Telecom Assoc. v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

¹³ *Id.* at 566.

must reject any block grant provisions that cede these responsibilities to an entity other than the Commission. The Joint Board proposals do not explain how block grant provisions would comply with the clear direction from Congress in making the Commission responsible for federal universal service and with the DC Circuit's findings on delegation of responsibilities. Without such justification, the Joint Board must not recommend any proposal containing block grants.

III. The Joint Board should reject proposals to create separate funds for wireless carriers.

USTelecom urged the Joint Board to reject proposals to create a separate, capped universal service fund for mobile carriers, citing a number of problems associated with such proposals, including the fact that the base of support would be narrowed and limited with the very real possibility that the Commission would then be unable to comply with its section 254(e) obligation to ensure that support is sufficient to all recipients.¹⁴ A number of commenters oppose proposals to create separate fund for wireless carriers, each with a specific focus on their own industry needs as the basis.¹⁵ However, what is paramount in this evaluation is compliance with the Congressional mandate that universal service support be sufficient, as recognized in the comments of Nextel Partners.¹⁶ Dividing the total amount of support available based upon technological differences will hinder and likely prevent the Commission's ability to comply the sufficiency mandate from Congress. The Joint Board should recommend no plan that includes a provision to establish separate support funds based on technological differences such as a wireless support fund.

¹⁴ See USTelecom Comments at 9-10.

¹⁵ See Sprint Nextel Comments at 5-7, CTIA Comments at 9-10, and GCI Comments at 16-17.

¹⁶ See Nextel Partners Comments at 13.

IV. The Joint Board should recognize the rural difference.

Carriers serving rural, high-cost areas provide consumers in those areas with a vital link to the rest of the country and the world and they help to sustain and advance economic development in those areas. These carriers are different from those serving the rest of the nation because they must depend on universal service support to build the networks and provide the services that are comparable to those in other parts of the country and at rates that are comparable to those in other parts of the country. This difference has not changed over time. The need for support to provide critical networks and services remains the same. Other commenters agree. The National Association of State Consumer Advocates (NASUCA) notes that “small companies are significantly different from their non-rural counterparts” and goes on to advocate that the “Commission should recognize the characteristics of those companies, and not attempt to adopt a single support mechanism for carriers of all sizes.”¹⁷ Similarly, the Regulatory Commission of Alaska (RCA) emphasizes that “it is unreasonable to treat small rural companies and large non-rural companies identically as is contemplated under a number of the proposals,” explaining that “there are numerous and profound differences between rural and non-rural carriers.”¹⁸ USTelecom could not agree more and maintains that the support rural, high-cost carriers receive is reasonable and necessary. The rural, high-cost fund is not broken and no changes are necessary. The Joint Board should refrain from making recommendations to change the current definition of a rural telephone company; to consolidate study areas; or to base support on a methodology other than embedded ILEC costs.

¹⁷ NASUCA Comments at 18-19.

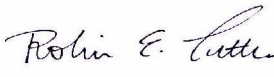
¹⁸ RCA Comments at 12.

CONCLUSION

The Joint Board should refrain from making recommendations to change the current rural, high-cost universal service support mechanism and should at a minimum reject any proposal to reform high-cost universal service support that contains a block grant provision or establishes a separate support fund based on the technology of the service provided.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on October 31, 2005, the aforementioned Reply Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and electronically mailed to the following:

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